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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 TERESA RICHARDSON,

11 Plaintiff,

12 v.

13 IBEW PACIFIC COAST PENSION
14 FUND,

15 Defendant.

CASE NO. C19-0772JLR

ORDER REGARDING
DEFENDANT’S MOTION TO
DISMISS OR FOR SUMMARY
JUDGMENT AND THE
PARTIES’ TRIAL BRIEFS

16 **I. INTRODUCTION**

17 Plaintiff Teresa Richardson brings an action under the Employee Retirement
18 Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001 *et seq.*, against Defendant
19 IBEW Pacific Coast Pension Fund (“IBEW” or “the Plan”) related to IBEW’s reduction
20 in her monthly pension benefit amount and IBEW’s attempt to recoup its alleged
21 overpayment to Ms. Richardson. (*See generally* Compl. (Dkt. # 1).) Essentially, Ms.
22 Richardson is appealing IBEW’s decision to reduce her monthly pension benefit and to

1 demand restitution of its overpayment to her. (*See id.* ¶ 2.12 (“[Ms.] Richardson
 2 appealed . . . IBEW[’s] . . . re-calculation of her pension benefits, but to no avail. [Ms.
 3 Richardson] has now exhausted all administrative appeal options through the Plan, [and]
 4 thus has standing to bring this action under ERISA Section 502(a)[, 29 U.S.C.
 5 § 1132(a)].”)

6 Before the court are: (1) IBEW’s motion to dismiss, or in the alternative for
 7 summary judgment (MSJ (Dkt. # 18)), and (2) the parties’ trial briefs (Plf. Tr. Br. (Dkt.
 8 # 24); Def. Tr. Br. (Dkt. # 23)). The court has reviewed the parties’ briefing, the
 9 administrative record on file (*see* AR (Dkt. # 17), and the applicable law. Being fully
 10 advised,¹ the court GRANTS in part and DENIES in part IBEW’s motion and
 11 RESOLVES the issues raised in the parties’ trial briefs, under the procedures, standards,
 12 and analysis described below, by upholding IBEW’s decision to reduce Ms. Richardson’s
 13 monthly pension benefit but reversing IBEW’s decision to recoup its alleged
 14 overpayment from Ms. Richardson.

15 II. BACKGROUND

16 Ms. Richardson filed this ERISA action on May 22, 2019, following IBEW’s
 17 denial of her pension benefit administrative appeal in 2017. (*See generally* Compl.) Ms.
 18 Richardson’s allegations arise from her status as an alternate payee under the Plan, which

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 20 ¹ In their joint proposed case schedule, the parties state that they intend that the March 16,
 21 2020, trial date “will be for oral argument only, following briefing on parties’ motions.” (Joint
 22 Prop. Sched. (Dkt. # 14) at 1.) The parties have extensively briefed the issues herein, and the
 court does not consider oral argument to be helpful to its disposition of the issues. Accordingly,
 the court denies the parties’ request for oral argument. *See* Local Rules W.D. Wash. LCR
 7(b)(4).

1 is an ERISA employee benefit pension plan. (*See* AR at 8, 14 (“Teresa Richardson is the
2 alternate payee for Participant Warren Richardson under [IBEW] Pacific Coast Pension
3 Fund.”), 441.)²

4 Ms. Richardson and non-party Warren Richardson divorced in October 2001. (*Id.*
5 at 14.) Pursuant to a Qualified Domestic Relations Order (“QDRO”), Ms. Richardson
6 was awarded 100% of the pension benefits credited to Mr. Richardson, as a participant in
7 the Plan from November 1974 to March 1996. (*Id.*) In 2006, Ms. Richardson applied for
8 her pension and received her first check in May 2006, in the amount of \$2,071.50. (*Id.*)
9 The Plan provides an actuarial reduction to a participant’s or an alternate payee’s gross
10 monthly benefit should the participant or alternate payee initiate benefit payments prior to
11 attaining regular retirement age as defined in the Plan. (*Id.* at 189, 208-09 (including
12 sections 3.05 and 7.06 of the Plan).) Because Ms. Richardson initiated her pension
13 benefits before attaining regular retirement age and prior to Mr. Richardson’s retirement,
14 IBEW reduced her gross monthly benefit at the time she began receiving her benefits
15 based on these Plan provisions. (*See id.*)

16 Ms. Richardson trusted IBEW when it told her that her \$2,071.50 monthly pension
17 payment was accurate. (*Id.* at 30.) Because Ms. Richardson struggles with a disability,
18 she ceased employment as a receptionist in 2008 “in reliance o[n] her retirement
19 benefits.” (*See* Compl. ¶ 2.9.) In 2011, the Social Security Administration determined
20 that Ms. Richardson is 100% disabled. (AR at 28.) Accordingly, she also receives Social

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22 ² All citations to the administrative record will refer to the page number generated by the
court’s electronic filing system.

1 Security disability payments. (*Id.*) The monthly pension benefit that Ms. Richardson
2 receives from IBEW and her social security disability payments are her only sources of
3 income. (*Id.*)

4 In a letter dated June 20, 2017, IBEW notified Ms. Richardson that the Plan had
5 conducted an audit and recalculated her monthly pension benefit and reduced it from
6 \$2,071.50 to \$1,103.73. (*Id.* at 15; 450-51.) Ms. Richardson began receiving this lower
7 monthly amount in August 2017. (*Id.* at 15, 444.) Based on this recalculation, IBEW
8 also notified Ms. Richardson that it had overpaid her by \$967.77 per month from May
9 2006 through July 2017, for a total overpayment of \$130,648.95. (*Id.* at 15, 450.) In its
10 June 20, 2017, letter, IBEW also demanded that Ms. Richardson repay, in full, its
11 \$130,648.95 overpayment. (*Id.* at 450.) Due to her disability, Ms. Richardson does not
12 have the ability to generate extra income. (AR at 30.) Accordingly, the Plan's reduction
13 in her pension benefits is a hardship. (*Id.*)

14 IBEW's review of Ms. Richardson's QDRO arose as part of an August 22, 2016,
15 audit of QDROs. (*Id.* at 37.) Ms. Richardson's QDRO awards her a 100% share of the
16 community accrual. (*Id.* at 38.) At the time Ms. Richardson filed her application for
17 pension benefits, the Plan was providing heavily subsidized early retirement benefits to
18 Plan Participants, which were funded solely through employer contributions. (*Id.* at 443.)
19 Part 4(a) of Ms. Richardson's QDRO states that the benefits are to be calculated in the
20 form of an annuity under the Joint and Survivor provisions of the Plan or, if applicable,
21 under Internal Revenue Code ("IRC") 414(p)(4)(A)(ii) based upon the ages of the
22 Alternate Payee (Ms. Richardson) and the Participant (Mr. Richardson) for 100% of the

1 value of the benefits credited to the Participant for the period from November 1974
2 through March 1996. (AR at 443; *see also* Plf. Resp. to Def. Tr. Br. (Dkt. # 27) at 13.)

3 IRC 414(p)(4)(A)(ii) provides, in pertinent part:

4 A domestic relations order shall not be treated as failing to meet the
5 requirements of subparagraph (A) of paragraph (3) solely because such order
6 requires that payment of benefits be made to an alternate payee-- . . . as if the
7 participant had retired on the date on which such payment is to begin under
such order (but taking into account only the present value of the benefits
actually accrued and not taking into account the present value of any
employer subsidy for early retirement)

8 26 U.S.C. § 414(p)(4)(A)(ii). In turn, IRC 414(p)(3)(A) states:

9 A domestic relations order meets the requirements of this paragraph only if
10 such order-- . . . (A) does not require a plan to provide any type or form of
benefit, or any option, not otherwise provided under the plan,

11 26 U.S.C. § 414(p)(3)(A).

12 During the QDRO audit, IBEW's actuary concluded that the prior Plan
13 Administrator miscalculated the benefits payable to Ms. Richardson by failing to consider
14 the forgoing provisions of the IRC and Ms. Richardson's QDRO and by failing to submit
15 the calculation to an actuary for a calculation to remove the value of the employer
16 subsidy that inhered in the Plan's early retirement benefits. (AR at 38, 443-44.) The
17 actuary calculated that Ms. Richardson's pension benefit at her annuity starting date—
18 disregarding the employer subsidy for early retirement and considering only the present
19 value of benefits actually accrued—should have been a monthly award of \$1,103.73, and
20 not \$2,071.50 as the prior Plan Administrator had calculated. (*Id.* at 443-44.)

21 On October 17, 2017, Ms. Richardson submitted an appeal to IBEW's Board of
22 Trustees challenging IBEW's decision to (1) reduce her monthly pension benefit and (2)

1 demand repayment of the alleged \$130,648.95 overpayment. (*Id.* at 13-20.) Ms.
2 Richardson did not submit an alternate actuarial calculation for her benefits challenging
3 IBEW's actuarial analysis of her benefits in the QDRO audit. (*See id.*) In a letter dated
4 December 12, 2017, IBEW's Board of Trustees notified Ms. Richardson that it denied her
5 appeal. (*Id.* at 2; *see also id.* at 4-11 (attaching minutes of the Board of Trustees'
6 November 16, 2017, meeting, during which the Board considered and denied Ms.
7 Richardson's appeal).)

8 Ms. Richardson filed her present action against IBEW on May 22, 2019. (*See*
9 *Compl.*) On September 17, 2019, the parties submitted a joint proposed case schedule in
10 which the parties represented that the case consists of a "review of the administrative
11 record only." (Joint Prop. Sched. at 1.) On November 15, 2019, IBEW filed a motion to
12 dismiss or, in the alternative, for summary judgment. (*See MSJ.*) IBEW's motion is
13 fully briefed. (*See SJ Resp.* (Dkt. # 20); *SJ Reply* (Dkt. # 22).) In addition, on January
14 31, 2020, IBEW filed a trial brief (*see Def. Tr. Br.*), and on February 3, 2020, Ms.
15 Richardson filed a trial brief (*see Plf. Tr. Br.*). The court ordered the parties to file
16 responsive memoranda to each other's trial briefs, and they have done so. (Plf. Resp. to
17 Def. Tr. Br. (Dkt. # 27); Def. Resp. to Plf. Tr. Br. (Dkt. # 26).) The issues presented in
18 IBEW's motion and the parties' trial briefs and responses are largely overlapping. The
19 court now considers all the issues presented by IBEW's motion and the parties' briefing
20 pursuant to the standards, procedures, and analysis described below.

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III. ANALYSIS

A. Legal Standards and Procedures

ERISA provides that any “participant” or “beneficiary” may bring a civil action in federal court. *See* 29 U.S.C. § 1132(a); *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 108 (2008). ERISA “confers beneficiary status on a nonparticipant spouse or dependent in only narrow circumstances delineated by its provisions.” *Boggs v. Boggs*, 520 U.S. 833, 846 (1997). One such provision is a QDRO, “a type of domestic relations order that creates or recognizes an alternate payee’s right to, or assigns to an alternate payee the right to, a portion of the benefits payable with respect to a participant under a plan.” *Id.* (citing 29 U.S.C. § 1056(d)(3)(B)(i)). A QDRO must not require a plan to provide any benefit or option, not otherwise provided under the plan, and must not require the plan to provide increased benefits (determined based on actuarial value). 29 U.S.C. § 1056(d)(3)(D)(i)-(ii). “In creating the QDRO mechanism Congress was careful to provide that the alternate payee, the ‘spouse, former spouse, child, or other dependent of a participant,’ is to be considered a plan beneficiary.” *Boggs*, 520 U.S. at 847 (citing 29 U.S.C. §§ 1056(d)(3)(K), (J)). There is no dispute that Ms. Richardson is an alternate payee under the QDRO at issue here (*see* Def. Tr. Br. at 2; Plf. Tr. Br. at 1), and the court concludes that she is entitled to bring this suit under ERISA.³

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³ In its motion, IBEW argues that Ms. Richardson failed to adequately allege a claim under the civil enforcement provisions of ERISA, 29 U.S.C. § 1132(a). (MSJ at 4-6.) The court has reviewed Ms. Richardson’s complaint and DENIES this portion of IBEW’s motion.

1 The court reviews an ERISA benefit determination *de novo*, “unless the benefit
2 plan gives the administrator or fiduciary discretionary authority to determine eligibility
3 for benefits or to construe the terms of the plan,” in which case the court reviews the
4 ERISA benefit determination under an abuse of discretion standard. *Firestone Tire &*
5 *Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989); *see also Stephan v. Unum Life Ins. Co. of*
6 *Am.*, 697 F.3d 917, 923-24 (9th Cir. 2012). Here, IBEW asserts that the Plan grants the
7 Board of Trustees discretionary authority to determine eligibility for benefits or to
8 construe the Plan’s terms. (*See* Def. Tr. Br. at 4-5; MSJ at 8.) Ms. Richardson does not
9 dispute this assertion. (*See generally* SJ Resp.; Plf. Resp. to Def. Tr. Br.) Indeed, the
10 Plan states that the Trustees shall “be the sole judges of the standard of proof required in
11 any case and the application and interpretation of this Plan, and the decisions of the
12 Trustees shall be final and binding on all parties.” (AR at 78, 218.) This language is
13 sufficient to confer discretionary authority on the Trustees. *See Abatie v. Alta Health &*
14 *Life Ins. Co.*, 458 F.3d 955, 963 (9th Cir. 2006) (stating that the Ninth Circuit has
15 “repeatedly held that similar plan wording—granting the power to interpret plan terms
16 and to make final benefits determinations—confers discretion on the plan
17 administrator”); *see also Grosz-Salomon v. Paul Revere Life Ins. Co.*, 237 F.3d 1154,
18 1159 (9th Cir. 2001) (holding that a plan providing that the administrator “has the full,
19 final, conclusive and binding power to construe and interpret the policy under the
20 plan . . . [and] to make claims determinations” grants discretion (internal quotation marks
21 omitted)). Accordingly, the court applies an abuse of discretion standard to its review.

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1 IBEW has filed a motion for summary judgment and the parties have also filed
2 opposing “trial briefs.” (See MSJ; Def. Tr. Br.; Plf. Tr. Br.) Where review is *de novo*,
3 Federal Rule of Civil Procedure 52 is the appropriate mechanism for resolving ERISA
4 disputes. See *Todd R. v. Premera Blue Cross Blue Shield of Alaska*, No. C17-1041JLR,
5 2019 WL 366225, at *2 (W.D. Wash. Jan. 30, 2019), *reconsideration denied*, No.
6 C17-1041JLR, 2019 WL 1923034 (W.D. Wash. Apr. 30, 2019) (“[W]hen applying a *de*
7 *novo* standard in an ERISA benefits case, a trial on the administrative record under Rule
8 52, which permits the court to make factual findings, evaluate credibility, and weigh
9 evidence, is a more appropriate vehicle for resolving the parties’ dispute.”). However,
10 where review is for abuse of discretion, the Ninth Circuit provides that Federal Rule of
11 Civil Procedure 56 is the appropriate “conduit to bring the legal question before the
12 district court.” *Harlick v. Blue Shield of Cal.*, 686 F.3d 699, 706 (9th Cir. 2009) (citing
13 *Nolan v. Heald College*, 551 F.3d 1148, 1154 (9th Cir. 2009)); see also *Bartholomew v.*
14 *Unum Life Ins. Co.*, 588 F. Supp. 2d 1262, 1265-66 (W.D. Wash. 2008) (“The
15 administrative record submitted in conjunction with [the] litigation exists as a body of
16 undisputed facts,” although “the conclusions to be drawn from those facts are definitely
17 in dispute.”). Thus, the court will resolve the dispute under Rule 56 and will construe the
18 arguments in the parties’ trial briefs as cross motions under Rule 56. Nevertheless, the
19 court recognizes that, in this context, Rule 56 is merely the vehicle for bringing the issues
20 before the court and the “the usual tests of summary judgment, such as whether a genuine
21 dispute of material fact exists, do not apply.” *Stephan*, 697 F.3d at 930 (citing *Nolan*,
22 551 F.3d at 1154).

B. Materials the Court Considers

Ms. Richardson attempts to supplement the administrative record with her submissions to the court. (*See* Compl. Exs. (Dkt. #1-3); Richardson Decl. (Dkt. # 19); SJ Resp. Exs. (Dkt. ## 20-1, 20-2).) IBEW argues that Ms. Richardson may not supplement the administrative record and asks the court to strike these additional materials. (Def. Tr. Br. at 6-7.) Unlike ERISA cases a court reviews *de novo*, “in general, a district court may review only the administrative record when considering whether the plan administrator abused its discretion.” *Abatie*, 458 F.3d at 970. Nevertheless, the Ninth Circuit liberally permits discovery concerning inquiries “designed to obtain ‘evidence of malice, of self-dealing, or of a parsimonious claims-granting history.’” *Santos v. Quebecor World Long Term Disability Plan*, 254 F.R.D. 643, 648 (E.D. Cal. 2009) (quoting *Abatie*, 458 F.3d at 968); *see also Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 949-50 (9th Cir. 2007) (holding that an ERISA plaintiff may conduct discovery in order to show a conflict of interest). Based on Ms. Richardson’s allegations and arguments, the court cannot discern a reason to depart from the general rule that its final decision shall be on the administrative record as it stands.

Moreover, Ms. Richardson repeatedly represented to the court that this case consisted of a “review of the administrative record,” and that there would “be no discovery or submittal of any evidence, other than the administrative record.” (JSR (Dkt. # 11) at 1; *see id.* at 2 (“[T]his case is limited to a review of the administrative record and whether the Trustees acted in an arbitrary and capricious manner in their denial of [Ms. Richardson’s] appeal.”); OSC Resp. (Dkt. #13) (“[T]he March 16, 2020 ‘trial’ date is

1 anticipated to be for oral argument only on the administrative record before the Court,
 2 and there will not be presentation of testimony or other additional evidence beyond the
 3 administrative record.”); Joint Prop. Sched. at 1 (“This matter is [a] . . . review of the
 4 administrative record, and there will be no discovery or submittal of any evidence, other
 5 than the administrative record.”).) In submitting additional evidence to the court, Ms.
 6 Richardson fails to address her myriad contrary representations to the court. Having
 7 made these repeated representations, the court is disinclined to allow Ms. Richardson to
 8 submit additional evidence in contravention thereto. Accordingly, the court considers
 9 only the administrative record on file herein (*see* AR), and strikes all of Ms. Richardson’s
 10 supplemental materials.

11 **C. IBEW’s Reduction in Ms. Richardson’s Monthly Pension Benefits**

12 “ERISA’s civil enforcement provision, 29 U.S.C. § 1132(a) . . . , creates an
 13 exclusive remedial scheme.” *Lea v. Republic Airlines, Inc.*, 903 F.2d 624, 631 (9th Cir.
 14 1990); *Gabriel v. Alaska Elec. Pension Fund*, 773 F.3d 945, 953 (9th Cir. 2014) (“The
 15 civil enforcement provisions of ERISA, codified in § 1132(a), are ‘the exclusive vehicle
 16 for actions by ERISA-plan participants and beneficiaries asserting improper processing of
 17 a claim for benefits.’”) (quoting *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 52 (1987)).
 18 The issue is not whether ERISA “bars a particular cause of action, but rather ‘whether the
 19 statute affirmatively *authorizes* such a suit.’” *Id.* at 954 (quoting *Mertens v. Hewitt*
 20 *Assocs.*, 508 U.S. 248, 255 n.5 (1993)).

21 Based on Ms. Richardson’s allegations and the arguments in her briefing, 29
 22 U.S.C. § 1132(a) provides Ms. Richardson with two potential bases for recovery of her

original and higher monthly pension benefit from IBEW. First, § 1132(a)(1)(B) provides that Ms. Richardson may bring a civil action “to recover benefits due to [her] under the terms of [her] plan, to enforce [her] rights under the terms of the plan, or to clarify [her] rights to future benefits under the terms of the plan.” 29 U.S.C. § 1132(a)(1)(B). Second, § 1132(a)(3) provides that Ms. Richardson may bring a civil action “to obtain other appropriate equitable relief” to redress violations or enforce provisions of ERISA or the Plan. 29 U.S.C. § 1132(a)(3)(B). The court will consider each claim in turn.

1. 29 U.S.C. § 1132(a)(1)(B)

As noted above, the court considers Ms. Richardson’s claim under 29 U.S.C. § 1132(a)(1)(B) and IBEW’s decision to reduce Ms. Richardson’s monthly pension benefit under an abuse of discretion standard. *See supra* § III.A.; *Bruch*, 489 U.S. at 109. The court’s review of the administrative record reveals no abuse of discretion in the Trustees’ decision to reduce Ms. Richardson’s monthly pension benefit. IBEW discovered the error in Ms. Richardson’s monthly benefit as part of a sample taken pursuant to an audit of QDROs dated August 22, 2016. (AR at 37.) The auditor’s calculations of Ms. Richardson’s pension benefit were based on provisions of the Plan in effect on the relevant dates and other information provided by IBEW, including Mr. Richardson’s birth date, Ms. Richardson’s birth date, their marriage date, their separation date according the QDRO, Ms. Richardson’s normal retirement age, Mr. Richardson’s normal retirement date (“NRD”), Mr. Richardson’s unadjusted accrued monthly benefit on his NRD, the 100% QDRO awarded to Ms. Richardson, and the annuity starting date for Ms. Richardson. (*Id.*) As noted above, when IBEW initially calculated Ms.

1 Richardson's pension award in 2006 at \$2,071.50 per month, IBEW did not submit the
2 calculation to an actuary to remove the employer subsidy that inhered in the Plan's early
3 retirement factors at that time. (*Id.* at 38.) When the auditor recalculated Ms.
4 Richardson's pension award in 2016, he excluded the value of this employer subsidy in
5 accordance with IRC 414(p)(3)(B) and 414(p)(4)(A)(ii). (*See* AR at 38); *see also* 26
6 U.S.C. §§ 414(p)(3)(A), 414(p)(4)(A)(ii). As a part of her appeal, Ms. Richardson
7 requested, and the actuary provided, a detailed description of his recalculation of her
8 pension benefit. (*See* AR at 37-39.)

9 Although Ms. Richardson argued in her appeal to the Trustees that IBEW should
10 return to its original, higher calculation, she did not submit her own opposing actuarial
11 analysis, present evidence that contradicted the auditor's recalculation, or otherwise
12 demonstrate that the recalculation was in error or an abuse of discretion. (*See* AR at 15.)
13 Thus, there is nothing in the administrative record to demonstrate that IBEW's Trustees
14 abused their discretion by reducing Ms. Richardson's monthly pension benefit. The court
15 must "accept the [Trustees'] interpretation unless it is 'not grounded on any reasonable
16 basis.'" *O'Rourke v. N. Cal. Elec. Workers Pension Plan*, 934 F.3d 993, 1000 (9th Cir.
17 2019) (quoting *Richardson v. Pension Plan of Bethlehem Steel Corp.*, 112 F.3d 982, 985
18 (9th Cir. 1997)). Indeed, "[t]he Trustees' interpretation need not be the one this court
19 would have reached, but only an interpretation which has rational justifications." *Tapley*
20 *v. Locals 302 & 612 of Int'l Union of Operating Eng'rs-Emp'rs Const. Indus. Ret. Plan*,
21 728 F.3d 1134, 1139-40 (9th Cir. 2013). Accordingly, the court GRANTS IBEW's
22 motion for summary judgment on this claim and DENIES this portion of Ms.

1 Richardson's trial brief, which the court construes as a cross motion for summary
2 judgment.

3 **2. 29 U.S.C. § 1132(a)(3)(B)**

4 Nevertheless, Ms. Richardson argues that she is entitled to her original, higher
5 payment based on equitable estoppel. (*See* SJ Resp. at 10; Plf. Tr. Br. at 10; Plf. Resp. to
6 Def. Tr. Br. at 16-17.) The Ninth Circuit recognizes that "appropriate equitable relief"
7 under 29 U.S.C. § 1132(a)(3) "may include the remedy of equitable estoppel, which
8 holds the fiduciary to what it had promised and operates to place the person entitled to its
9 benefit in the same position he would have been in had the representations been true."
10 *Gabriel*, 773 F.3d at 955. However, in addition to the traditional elements of estoppel, a
11 plan participant asserting an ERISA estoppel claim must also show (1) extraordinary
12 circumstances, (2) that the provisions of the plan are ambiguous such that reasonable
13 persons could disagree as to their meaning, and (3) that the representations about the plan
14 were an interpretation of the plan and not an amendment or modification of the plan. *Id.*
15 at 957. In *Gabriel*, the Ninth Circuit held that a plan representative's "mere mistake in
16 assessing . . . entitlement to benefits" under a pension plan is not "an interpretation of
17 ambiguous language in the Plan," and therefore does not support an ERISA estoppel
18 claim. *Id.* at 959. Here, Ms. Richardson has not demonstrated that the Plan contains a
19 relevant ambiguity. Rather, the administrative record demonstrates a "mere mistake in
20 assessing [her] . . . entitlement to benefits." *See id.* Accordingly, the court concludes that
21 she cannot maintain a claim for equitable relief concerning IBEW's recalculation of her
22 monthly pension benefits. Thus, the court GRANTS IBEW's motion for summary

1 judgment as it relates to Ms. Richardson's equitable claim for a restoration of her higher
2 monthly pension benefits and DENIES the corresponding portion of Ms. Richardson's
3 trial brief, which the court construes as a cross motion for summary judgment.

4 **D. IBEW's Recoupment of Its Overpayment to Ms. Richardson**

5 The issue that remains is whether Ms. Richardson must repay IBEW for the
6 \$130,648.95 in overpayments that IBEW sent to her over the course of more than 11
7 years. In its June 20, 2017, letter to Ms. Richardson, IBEW demanded repayment, in full.
8 (AR at 450.) In her administrative appeal, Ms. Richardson asked the Trustees to waive or
9 reverse their decision to seek recoupment of the overpayment. (*Id.* at 16-19.) In its
10 briefing, IBEW admits that Ms. Richardson is correct "that pursuit of an overpayment . . .
11 is not mandatory." (Def. Resp. to Plf. Tr. Br. (Dkt. # 26) at 13.) Nevertheless, IBEW
12 argues that the action is discretionary and that it has a fiduciary obligation "to recover
13 erroneous payments made from a plan." (*Id.* (quoting U.S. Dep't of Labor, Advisory Op.
14 77-08 at 2 (Apr. 4, 1977))).

15 Here, although the Plan expressly permits the Trustees to recoup overpayments
16 under some circumstances, those circumstances do not include where the overpayment is
17 due entirely to IBEW's mistake. Specifically, the Plan provides:

18 The Trustees shall have the right to recover any benefit payments made (1)
19 in reliance on any willfully made false or fraudulent statement, information
20 or proof submitted by a Participant or Pensioner, or (2) prior to the receipt of
21 any required notifications.

22 (AR at 78, 218.) There is no evidence in the administrative record to support any
wrongdoing on Ms. Richardson's part that induced IBEW's overpayment. Indeed, the

1 overpayment was entirely IBEW's error. *See supra* § II. Further, even if the plan
2 unambiguously provides a plan fiduciary with the right to recoup an overpayment,
3 “‘equitable principles may limit an ERISA fiduciary’s legal right’ to so do.” *Knapp v.*
4 *Sedwick CMS*, No. 3:11-cv-393, 2013 WL 26051, at *3 (S.D. Ohio Jan. 2, 2013) (quoting
5 *Butler v. Aetna U.S. Healthcare, Inc.*, 109 F. Supp. 2d 856, 862 (S.D. Ohio 2000)).

6 “ERISA does not specifically address the ability of plans to recoup.” *Phillips v.*
7 *Mar. Assoc.—I.L.A. Local Pension Plan*, 194 F. Supp. 2d 549, 555 (E.D. Tex. 2001).

8 However, the Supreme Court directs federal courts to create a body of common law “to
9 fill in the gaps of ERISA.” *Id.* (citing *Dedeaux*, 481 U.S. at 56; *Bruch*, 489 U.S. at
10 110-11)). “When a plan does not specifically allow for recoupment, but nevertheless [the
11 plan] does so, it exercises extra-statutory devices to do so.” *Id.* Thus, when IBEW
12 demanded that Ms. Richardson repay the \$130,648.95 overpayment, IBEW—not Ms.
13 Richardson—availed itself of the common law remedy of restitution. *See id.*; *see also*
14 *Dandurand v. Unum Life Ins. Co. of Am.*, 150 F. Supp. 2d 178, 184 (D. Me. 2001) (“By
15 recouping the overpayment, [the administrator] has availed itself of the equitable remedy
16 of restitution.”). The focus of the court’s analysis, therefore, must be on whether IBEW
17 is entitled to rely on this doctrine. *See Phillips*, 194 F. Supp. 2d at 555. As the court
18 explains below, considerations of the equities in this case and ERISA’s guiding
19 principles, lead the court to conclude that IBEW is not entitled to avail itself of this
20 equitable remedy under the specific factual circumstances of this case.

21 Courts have considered a variety of factors to determine if equitable principles bar
22 recovery of mistaken overpayments to an ERISA plan beneficiary, including (1) the

1 amount of time which has passed since the overpayment was made; (2) the effect that
 2 recoupment would have on that income; (3) the nature of the mistake by the
 3 administrator; (4) the amount of the overpayment; (5) the beneficiary's total income; and
 4 (6) the beneficiary's use of the money at issue. *Knapp*, 2013 WL 26051, at *4 (citing
 5 *Wells v. U.S. Steel & Carnegie Pension Fund, Inc.*, 950 F.2d 1244, 1251 (6th Cir. 1991));
 6 *see also Bocchino v. Trs. of Dist. Council of Ironworkers of N. N.J.*, No. Civ.A. 07-864
 7 PGS, 2008 WL 1844298, at *6 (D.N.J. Apr. 23, 2008) ("Factors pertinent to review
 8 include (1) what disposition the beneficiary has made of the overpayment; (2) the
 9 overpayment amount; (3) the nature of the trustees' mistake, e.g. negligence; and (4) the
 10 time lapsed since the overpayment was made."); *Kwatcher v. Mass. Serv. Emps. Pension*
 11 *Fund*, 879 F.2d 957, 967 (1st Cir. 1989), *abrogated on other grounds by Raymond B.*
 12 *Yates, M.D., P.C. Profit Sharing Plan v. Hendon*, 541 U.S. 1 (2004) ("The trial court
 13 should consider whatever factors it may reasonably believe shed light on the fairness of
 14 reimbursement, and weigh those factors against the backdrop of general equitable
 15 considerations and the guiding principles and purposes of ERISA.").

16 Here, the balance of the equities does not favor allowing IBEW to recoup its past
 17 overpayments to Ms. Richardson. First, the overpayments occurred over a period of
 18 more than eleven years. (*See* AR at 38 ("[Ms. Richardson] has been receiving \$2,071.50
 19 per month since May 1, 2006").) The length of time that IBEW permitted the error
 20 to continue weighs against permitting any recoupment. Ms. Richardson did not know
 21 that she was being overpaid, and she relied on IBEW when it told her that its distributions
 22 to her were accurate. (*See id.* at 30.) Second, the amount of the overpayment also

weighs against recoupment. This consideration is tied to the first because the amount of overpayment grew so large entirely due to IBEW's failure to discover its error for more than 11 years. Ms. Richardson is disabled and lives on a limited, fixed income. (*See id.* at 28-30.) She does not have the ability to repay such a large sum, which IBEW all but admits. (*See id.*; *see also* Def. Resp. to Plf. Tr. Br. at 13 (“[I]t is unclear if [Ms. Richardson would be able to repay any of the overpaid benefits”]).) Finally, the overpayment occurred due to no fault on Ms. Richardson's part. *See supra* § II. Rather, the overpayments were solely the result of IBEW's error. *See id.* Indeed, the overpayments were more than IBEW's mere mistake; IBEW breached its fiduciary duty when it failed to consult an actuary when initially calculating Ms. Richardson's monthly pension benefit. (*See* AR at 38 (“In 2006, when [Ms. Richardson] began receiving her benefits, the Administrator at that time did not refer the matter to an actuary”)); *see also Phillips*, 194 F. Supp. 2d at 557 (“There is no restitution in this matter because of the blatant breach of fiduciary duty. The initial breach was [the administrator's] failure to seek an actuary when calculating the Plaintiff's monthly payment amounts.”). Finally, there is no evidence in the administrative record that disallowing IBEW to engage in restitution will put the corpus of the Plan's funds in jeopardy for IBEW's participants or beneficiaries.⁴ (*See generally* AR.)

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⁴ Indeed, IBEW asserts that Ms. Richardson's contention that the Plan was experiencing severe hardship is “irrelevant,” “unfounded supposition,” “false,” “and should be stricken.” (Def. Resp. to Plf. Tr. Br. at 8.)

1 The foregoing considerations combine to weigh against allowing IBEW to invoke
 2 the equitable doctrine of restitution or recoup the \$130,648.95 overpayment from Ms..⁵
 3 Accordingly, the court DENIES IBEW's motion for summary judgment concerning
 4 recoupment of its overpayment from Ms. Richardson, and GRANTS the corresponding
 5 portion of Ms. Richardson's trial brief, which the court construes as a cross motion for
 6 summary judgment.

7 **E. Attorney's Fees**

8 Ms. Richardson seeks an award of attorney's fees. (*See* Plf. Tr. Br. at 19 ("[Ms.
 9 Richardson] request[s] reasonable attorney fees be awarded."); *see also* SJ Resp. at 19.)
 10 IBEW also requests an award of fees. (*See* Def. Resp. to Plf. Tr. Br. at 14-15.) However,
 11 IBEW did not request fees until it filed its response to Ms. Richardson's trial brief. (*See*
 12 *id.*) Thus, Ms. Richardson has not had an opportunity to respond to IBEW's argument
 13 for an award of fees in its favor.

14 ERISA provides that "the court in its discretion may allow a reasonable attorney's
 15 fee and costs of action to either party." 29 U.S.C. § 1132(g)(1). "[A] fees claimant must
 16 show 'some degree of success on the merits' before a court may award attorney's fees
 17 under § 1132(g)(1)." *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 255 (2010)

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19 ⁵ The court's ruling does not prohibit IBEW from attempting to recoup its overpayment
 20 from a source other than Ms. Richardson. *See, e.g., Phillips*, 194 F. Supp. 2d at 557 ("[I]n
 21 denying the recoupment efforts by the Plan as to the Plaintiffs, this court has not necessarily
 22 precluded the Plan from recovery. The Plan may seek recovery on behalf of its beneficiaries
 from [the Administrator who committed the error], the Board, or other trustees that may be found
 liable to the Plan. Disallowing the Plan to recoup from Plaintiffs because of [the
 Administrator's] blatant breach of fiduciary duty does not leave the Plan without remedy.").

(quoting *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 694 (1983)). Once the fees claimant establishes this threshold requirement, the court must determine whether the five factors from *Hummell v. S.E. Rykoff & Co.*, 634 F.2d 446 (9th Cir. 1980), weigh in favor of awarding the claimant’s attorney’s fees. *Simonia v. Glendale Nissan/Infiniti Dis. Plan*, 608 F.3d 1118, 1119, 1121 (9th Cir. 2010) (“[A]fter determining a litigant has achieved some degree of success on the merits [under *Hardt*], district courts must still consider the *Hummell* factors before exercising their discretion to award fees under § 1132(g)(1).”). The *Hummell* factors are: (1) the degree of the opposing party’s culpability or bad faith; (2) the ability of the opposing party to satisfy an award of fees; (3) whether an award of fees against the opposing party would deter others from acting under similar circumstances; (4) whether the party requesting fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA; and (5) the relative merits of the parties’ positions. *Hummell*, 634 F.2d at 453.

Here, both parties achieved the threshold requirement of attaining “some degree of success on the merits.” *See Hardt*, 560 U.S. at 255. IBEW succeed on the issue of reducing Ms. Richardson’s monthly pension benefit to the correct calculation, *see supra* §§ III.C.1, 2, and Ms. Richardson prevailed on the issue of recoupment of the overpayment, *see supra* § III.D. The court concludes, however, that application of the *Hummel* factors favors an award of fees to Ms. Richardson but not to IBEW.

The first *Hummel* factor—the degree of the opposing party’s culpability or bad faith—favors an award to Ms. Richardson. The court has previously discussed the distinction between the terms “culpability” and “bad faith.” *See Todd R.*, 2019 WL

1 1923034, at *5 (citing *Pease v. Hartford Life & Accident Ins. Co.*, 449 F.3d 435, 450 (2d
2 Cir. 2006) & *McPherson v. Emp’rs’ Pension Plan of Am. Re-Ins. Co.*, 33 F.3d 253, 257
3 (3d Cir. 1994)); *see also Flaaen v. Principal Life Ins. Co.*, No. C15-5899 BHS, 2017 WL
4 6527144, at *2 (W.D. Wash. Dec. 21, 2017), *appeal dismissed sub nom. Flaaen v.*
5 *McLane Co., Inc.*, No. 17-35969, 2018 WL 1941322 (9th Cir. Mar. 14, 2018)
6 (recognizing a distinction between “bad faith” and “culpability”). Although “bad faith
7 normally connotes an ulterior motive or sinister purpose, . . . [a] losing party may be
8 culpable . . . without having acted with an ulterior motive.” *McPherson*, 33 F.3d at 256.
9 “[C]ulpable conduct” is “commonly understood” to mean “blameable,” “censurable,” or
10 “at fault.” *Id.* at 257 (citing Black’s Law Dictionary (6th ed. 1990)). It “normally
11 involves something more than simple negligence” and “implies that the act or conduct
12 spoken of is reprehensible or wrong, but [does] not . . . involve[] malice or a guilty
13 purpose.” *Id.* Although the court finds no Ninth Circuit authority on this point, the court
14 finds the foregoing authority persuasive.

15 As described above, IBEW’s conduct here was more than merely negligent.
16 IBEW’s failure to refer its initial calculation of Ms. Richardson’s pension benefits to an
17 actuary for a calculation to remove the employer subsidy that inhered in the Plan’s early
18 retirement factors amounted to a breach of its fiduciary duties. *See supra* § III.D; *see*
19 *also Phillips*, 194 F. Supp. 2d at 557. On the other hand, nothing in the administrative
20 record supports any culpability or bad faith on Ms. Richardson’s part. Accordingly, this
21 factor supports an award of fees to Ms. Richardson and not to IBEW.

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1 The second *Hummel* factor is “the ability of the opposing part[y] to satisfy an
2 award of fees.” 634 F.2d at 453. The administrative record demonstrates that Ms.
3 Richardson, who is disabled and on a limited and fixed income, has no ability to pay an
4 award of fees. (*See* AR at 28-30.) There is no evidence concerning IBEW’s ability to
5 pay a fee award in the record. (*See generally id.*) Thus, at most, this factor weighs
6 against an award of fees to IBEW and is neutral with respect to an award of fees to Ms.
7 Richardson.

8 The third *Hummell* factor is “whether an award of fees against the opposing
9 part[y] would deter others from acting under similar circumstances.” 634 F.2d at 453.
10 Here, there is no conduct on the part of Ms. Richardson to deter since the court has found
11 that she engaged in no culpable conduct with respect to IBEW’s overpayment of her
12 pension benefits. *See supra* § III.D. On the other hand, an award of fees against IBEW
13 may serve to deter it from failing to seek actuarial advice in similar circumstances in the
14 future. Accordingly, the court concludes that this factor favors an award of fees to Ms.
15 Richardson and disfavors and award to IBEW.

16 The fourth *Hummell* factor is whether the party requesting fees sought to benefit
17 all Plan participants and beneficiaries or to resolve a significant legal question regarding
18 ERISA. *Hummell*, 634 F.2d at 453. Ms. Richardson did not seek relief for any other
19 Plan member. (*See generally* Compl.; SJ Resp.; Plf. Tr. Br.) Further, the court decided
20 her petition on its facts. IBEW’s efforts, on the other hand, to eliminate its overpayment
21 of pension benefits to Ms. Richardson benefit the Plan by preserving the corpus of the

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1 Plan's funds for legitimate pension payments. Thus, the court concludes that this factor
2 weighs in favor of an award of fees to IBEW but not to Ms. Richardson.

3 The final *Hummell* factor is the relative merits of the parties' positions. 634 F.2d
4 at 453. The court concludes that this factor is neutral because each side prevailed with
5 respect to a significant issue. *See supra* §§ III.C., D.

6 Under the *Hummell* factors, the court concludes that Ms. Richardson is entitled to
7 an award of attorney's fees and IBEW is not. Two of the factors weigh in favor of an
8 award to Ms. Richardson, one weighs against, and two are neutral. On the other hand,
9 only one factor weighs in favor of an award to IBEW, three weigh against, and one is
10 neutral. On balance, the *Hummel* factors support an award of attorney's fees to Ms.
11 Richardson and not to IBEW. Therefore, the court GRANTS Ms. Richardson's request
12 for an award of attorney's fees and costs pursuant to 29 U.S.C. § 1132(g)(1).

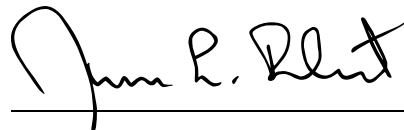
13 "The party seeking fees bears the burden of documenting the hours expended in
14 the litigation and must submit evidence supporting those hours and the rates claimed."
15 *Welch*, 480 F.3d at 945-46 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)).
16 Accordingly, the court orders Ms. Richardson to file a motion detailing the reasonable
17 attorney's fees she has incurred in this litigation within 14 days of the filing date of this
18 order.⁶ IBEW will have the opportunity to respond to Ms. Richardson's motion pursuant
19 to the court's local rules. *See generally* Local Rules W.D. Wash. LCR 7.

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21 ⁶ In determining the reasonable amount of fees to award, the court uses a hybrid
22 lodestar/multiplier approach. *McElwaine v. US West, Inc.*, 176 F.3d 1167, 1173 (9th Cir. 1999).
The court arrives at the "lodestar" figure by multiplying the number of hours reasonably
expended by a reasonable hourly rate. *Id.* Additionally, "in rare and exceptional cases, the

IV. CONCLUSION

Based on the foregoing analysis, the court GRANTS in part and DENIES in part IBEW's motion to dismiss, or in the alternative for summary judgment (Dkt. # 18) and GRANTS in part and DENIES in part the parties' trial briefs (Dkt. ## 23, 24), which the court construes as cross motions for summary judgment. Specifically, the court GRANTS IBEW's motion for summary judgment on Ms. Richardson's claim that the Board of Trustees abused their discretion in denying her appeal for reinstatement of her prior monthly pension benefit or that she is entitled to reinstatement of her prior monthly pension benefits on grounds of equitable estoppel, and DENIES Ms. Richardson's cross motion on these same issues. In addition, the court GRANTS Ms. Richardson's motion for summary judgment that IBEW is not entitled to recoupment or restitution of its \$130,648.95 overpayment, and DENIES IBEW's cross motion on this same issue. Finally, the court GRANTS Ms. Richardson's request for an award of attorney's fees and ORDERS her to file a motion detailing the reasonable attorney's fees and costs that she incurred in this litigation within 14 days of the filing date of this order.

Dated this 6th day of July, 2020.



JAMES L. ROBART
United States District Judge

district court may adjust the lodestar upward or downward using a multiplier based on facts not subsumed in the initial lodestar calculation.” Welch, 480 F.3d at 946.